

# Attachment 2

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Petition )

of Intrado Communications Inc. for Arbitration )

Pursuant to Section 252(b) of the Communications Act )

of 1934, as amended, to Establish an Interconnection )

Agreement with Verizon North Inc. )

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Case No. 08-198-TP-ARB

**REPLY BRIEF OF INTRADO COMMUNICATIONS INC.**

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## **TABLE OF CONTENTS**

|   | <b><u>Page</u></b> |
|---|--------------------|
| INTRODUCTION AND SUMMARY .....  | 1                  |
| ARGUMENT .....  | 4                  |
| I. ISSUE 1: WHERE SHOULD THE POINTS OF INTERCONNECTION BE LOCATED<br>AND WHAT TERMS AND CONDITIONS SHOULD APPLY WITH REGARD<br>TO INTERCONNECTION AND TRANSPORT OF TRAFFIC? .....   | 6                  |
| ISSUE 5: HOW SHOULD THE PARTIES ROUTE 911/E-911 CALLS TO EACH<br>OTHER? .....   | 6                  |
| II. ISSUE 2: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE<br>ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD<br>GOVERN THE EXCHANGE OF 911/E-911 CALLS BETWEEN THE PARTIES?<br>.....   | 12                 |
| III. ISSUE 3: WHETHER THE FORECASTING PROVISIONS SHOULD BE<br>RECIPROCAL? .....   | 14                 |
| IV. ISSUE 7: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH<br>REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES AND IF<br>SO, WHAT THOSE PROVISIONS SHOULD BE.....   | 14                 |
| V. ISSUE 10: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E-911<br>RELATED SERVICES AND WHAT SHOULD INTRADO COMM CHARGE<br>VERIZON FOR 911/E-911 RELATED SERVICES? .....   | 16                 |
| ISSUE 11: WHETHER ALL “APPLICABLE” TARIFF PROVISIONS SHALL BE<br>INCORPORATED INTO THE AGREEMENT, WHETHER TARIFFED RATES<br>SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF;<br>WHETHER TARIFFED RATES MAY AUTOMATICALLY SUPERSEDE THE<br>RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT<br>A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON<br>PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH<br>REGARD TO “TBD” RATES SHOULD BE INCLUDED IN THE AGREEMENT<br>..... | 16                 |
| ISSUE 12: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE<br>THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES<br>FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS .....  | 16                 |
| VI. IN MANY INSTANCES, VERIZON’S BRIEF PROVIDES LITTLE, IF ANY, LEGAL<br>OR FACTUAL SUPPORT FOR ITS PROPOSED LANGUAGE (ARBITRATION<br>ISSUES 4, 6, 8, 9, 13, 14, 15, AND 16) .....  | 18                 |
| CONCLUSION.....   | 19                 |
| CERTIFICATE OF SERVICE  |                    |
| ATTACHMENTS 1-2   |                    |

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**REPLY BRIEF OF INTRADO COMMUNICATIONS INC.**

Intrado Communications Inc. (“Intrado Comm”), by its attorneys, hereby submits its Reply Brief in connection with Intrado Comm’s Petition for Arbitration (“Petition”) to Establish an Interconnection Agreement with Verizon North Inc. (“Verizon”) pursuant to Section 252(b) of the Communications Act of 1934, as amended (“Act”).<sup>1</sup> The Public Utilities Commission of Ohio (“Commission”) should adopt Intrado Comm’s positions and proposed interconnection agreement language as set forth herein, in Intrado Comm’s Initial Brief, and in the Joint Issues Matrix<sup>2</sup> for the unresolved issues between the Parties.

**INTRODUCTION AND SUMMARY**

Verizon’s Initial Brief raises no new arguments and provides no justification for the Commission to depart from its well-reasoned decisions<sup>3</sup> in the *Embarq Arbitration Award*,<sup>4</sup> the

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<sup>1</sup> 47 U.S.C. § 252(b).

<sup>2</sup> Per the Hearing Examiner’s request, the Parties filed on February 13, 2009 an updated Joint Issues Matrix reflecting citations to the Transcript for each issue.

<sup>3</sup> Indeed, the Commission must “respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.” *Cleveland Elect. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St. 2d 403, 431 (1975). Further, “[i]t is axiomatic that an administrative agency must conform with its own precedents or explain its departure with them.” *Ohio Fast Freight, Inc. v. U.S.*, 574 F.2d 316, 319 (6<sup>th</sup> Cir. 1978).

<sup>4</sup> Case No. 07-1216-TP-ARB, *Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Award (Sept. 24, 2008) (“*Embarq Arbitration Award*”).

*CBT Arbitration Award*,<sup>5</sup> the *CBT Rehearing Award*,<sup>6</sup> and most recently the *AT&T Arbitration Award*.<sup>7</sup> The Commission has analyzed and rejected nearly every argument made by Verizon and should do so again here. Indeed, Verizon's Initial Brief virtually ignores this Commission's prior conclusions, is replete with factual inaccuracies, and is devoid of any legal authority or record evidence supporting its positions.

In its prior decisions, the Commission has rightfully exercised its broad authority over the deployment of competition and 911 services generally<sup>8</sup> as well as its jurisdiction under Sections 251(c) and 251(a) of the Act to uphold Intrado Comm's interconnection rights and adopt Intrado Comm's interconnection proposals.<sup>9</sup> For example, in order to maintain industry-standard

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<sup>5</sup> Case No. 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Arbitration Award (Oct. 8, 2008) ("*CBT Arbitration Award*").

<sup>6</sup> Case No. 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Entry on Rehearing (Jan. 14, 2009) ("*CBT Rehearing Award*").

<sup>7</sup> Case No. 07-1280-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Arbitration Award (Mar. 4, 2009) ("*AT&T Arbitration Award*").

<sup>8</sup> See, e.g., Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order (Feb. 5, 2008) ("*Certification Order*"), Order on Rehearing (Apr. 2, 2008) ("*Certification Rehearing Order*"). In the *Certification Order*, the Commission confirmed "the importance of regulating competitive emergency services telecommunications carriers ["CESTCs"] in light of the significant public interest surrounding the provision of 9-1-1 service." *Certification Order* at Finding 7.

<sup>9</sup> *Embarq Arbitration Award* at 33; *CBT Arbitration Award* at 8-9; *AT&T Arbitration Award* at 34. Verizon also claims that the Commission cannot exercise its authority under Section 253(b) because that section is not pertinent to Section 251. See Verizon Brief at 17-18. Verizon is mistaken as demonstrated in Intrado Comm's Brief. See Intrado Comm Brief at 10-12. The title of Section 253 is "Removal of Barriers to Entry," which was Congress' main goal in enacting Sections 251 and 252. See 47 U.S.C. § 253; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 16 (1996) ("*Local Competition Order*") ("Section 251(c) was intended to facilitate "[v]igorous competition," which Congress understood "would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [ILECs].") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). Section 253 "set[s] aside a large regulatory territory for State authority" based on the partnership between the Federal Communications Commission and state commissions created by Sections 251 and 252. See *American Communications Services, Inc.; MCI Telecom. Corp.; Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecom. Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended*, 14 FCC Rcd 21579, ¶ 35 (1999). The Act

interconnection practices in the competitive market for 911 services to Ohio counties and public safety answering points (“PSAPs”), the Commission correctly determined that Section 251(a) along with its broad authority over 911 service supports the adoption of Intrado Comm’s proposed interconnection arrangements.<sup>10</sup> The same holds true here. Verizon’s attempt to have the Commission ignore these important public interest findings and unnecessarily restrict its authority should be rejected.<sup>11</sup>

Intrado Comm’s interconnection proposals are supported by law, public policy, and industry-accepted practices, and Verizon has not shown otherwise. While Verizon claims that Intrado Comm’s interconnection proposals are for Intrado Comm’s benefit,<sup>12</sup> Verizon is wrong. Intrado Comm’s proposals are specifically designed to benefit Ohio public safety agencies and are consistent with the network arrangements Verizon has deemed to be the most reliable and suitable for 911 traffic.<sup>13</sup> Accordingly, Intrado Comm’s proposed language and positions should be adopted for inclusion in the Parties’ interconnection agreement to ensure Ohio public safety agencies and Ohio citizens dialing 911 receive the most reliable, redundant, and diverse 911 network possible.

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makes clear that states play a significant role in the development of competitive telecommunications markets, including the competitive 911 market. *See The Public Utility Commission of Texas; The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460, ¶ 52 (1997).

<sup>10</sup> *Embarq Arbitration Award* at 15.

<sup>11</sup> Verizon Brief at 4.

<sup>12</sup> Verizon Brief at 8.

<sup>13</sup> *See, e.g.*, Transcript at 166, lines 22-23 (Sannelli) (noting that the manner in which Verizon is currently routing 911 traffic “is the most cost effective and reliable way of doing it”); Transcript at 152, lines 5-7 (Sannelli) (“We do our utmost best to have an extremely reliable and efficient 9-1-1 system that routes calls to the correct PSAP.”); *see also* Intrado Comm Brief at 13.

## ARGUMENT

Verizon's arguments regarding Intrado Comm's right to Section 251(c) interconnection misconstrue the Commission's prior rulings and only serve to demonstrate that Verizon seeks to use its monopoly position as the predominant provider of 911/E-911 services in its territory to impede Intrado Comm's entry into the market. Verizon's attempt to challenge Intrado Comm's right to a Section 251(c) interconnection agreement should be rejected.<sup>14</sup> In addition to the fact that this issue is not before the Commission as a matter for arbitration,<sup>15</sup> the Commission has confirmed on at least four prior occasions that Intrado Comm's 911 service is a telephone exchange service and that Intrado Comm is entitled to all rights under Sections 251 and 252.<sup>16</sup>

Verizon is therefore wrong when it says this Commission determined in the *Embarq* and *CBT* proceedings that Intrado Comm "is not entitled to Section 251(c) interconnection when Intrado handles ILECs' end users' 911 calls."<sup>17</sup> The Commission made no such determination. In the *Embarq Arbitration Award*, the Commission rejected Embarq's attempt to re-litigate whether Intrado Comm offers telephone exchange service and specifically stated that "Embarq cannot generically deny Intrado its rights under Sections 251(c) and 252 of the 1996 Act and Ohio law by claiming that Intrado does not offer telephone exchange services."<sup>18</sup> The

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<sup>14</sup> Verizon Brief at 2-4. Verizon is also wrong when it claims that the Florida commission indicated that Intrado Comm "could provide its services through the use of commercial agreements." See Verizon Brief at 2. In fact, the Florida commission determined that Intrado Comm could obtain interconnection pursuant to Section 251(a). See Verizon Panel Testimony at Exhibit 1.6 (Intrado Comm/AT&T); Verizon Panel Testimony at Exhibit 1.7 (Intrado Comm/Embarq).

<sup>15</sup> 47 U.S.C. § 252(b)(4)(A); see also Currier at 9, lines 10-16 (explaining that Intrado Comm's rights to 251(c) interconnection are not at issue in this proceeding as reflected on the Joint Issues Matrix).

<sup>16</sup> Certification Order at Finding 7; *Embarq Arbitration Award* at 13; *CBT Arbitration Award* at 5; *AT&T Arbitration Award* at 15-16.

<sup>17</sup> Verizon Brief at 1-2.

<sup>18</sup> *Embarq Arbitration Award* at 13; see also *AT&T Arbitration Award* at 15 (noting that the Commission "rejected Embarq's attempt to resurrect its arguments" in the *Embarq Arbitration Award*).

Commission reaffirmed this in the *CBT Arbitration Award*<sup>19</sup> and the *CBT Rehearing Award*.<sup>20</sup>

And more recently the Commission explicitly analyzed Intrado Comm's service and again concluded that "Intrado's 911 service is telephone exchange service" and therefore "AT&T must provide interconnection to Intrado for all services offered by Intrado under its certification."<sup>21</sup>

Verizon's arguments to the contrary should therefore be rejected.<sup>22</sup>

Nor is there any merit to Verizon's claim that the Commission cannot analyze Intrado Comm's interconnection requests under Section 251(c) as well as Section 251(a) of the Act.<sup>23</sup>

The Commission has correctly found on three prior occasions that it has the authority to arbitrate and oversee all Section 251 interconnection agreements, not just those pertaining to Section 251(c).<sup>24</sup> The Commission's authority to utilize Section 251(a) is present regardless of whether either Party raised it as an issue because "the Commission is not barred by mere omission from applying applicable law."<sup>25</sup> Thus, "[e]ven though neither party has raised an issue

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<sup>19</sup> *CBT Arbitration Award* at 5.

<sup>20</sup> *CBT Rehearing Award* at 5 (determining that CESTCs are generally entitled to all rights under Sections 251 and 252).

<sup>21</sup> *AT&T Arbitration Award* at 15, 17.

<sup>22</sup> In its Reply Brief, Verizon will likely include a discussion of a Proposed Arbitration Decision issued on February 13, 2009 in Intrado Comm's arbitration proceeding with AT&T Illinois. The Proposed Arbitration Decision from Illinois is not relevant to this matter for the following reasons. *First*, the Commission has already decided this issue on at least four prior occasions. *Second*, the Proposed Arbitration Decision is not a final decision and remains subject to review and revision by the full Illinois commission. Intrado Comm filed written exceptions and reply exceptions to the decision, which are attached (Attachments 1 and 2). A final decision from the full Illinois commission is expected either March 17 or March 25, 2009. *Third*, unlike Intrado Comm's arbitration proceeding with AT&T in Illinois, the issue of whether Intrado Comm is entitled to Section 251(c) interconnection is not a matter that has been presented to this Commission for arbitration in this proceeding.

<sup>23</sup> Verizon Brief at 3.

<sup>24</sup> See, e.g., *Embarq Arbitration Award* at 15 (finding the provisions of Section 252 "encompass all Section 251 interconnection agreements, and not just those pertaining to Section 251(c) of the Act"); *CBT Rehearing Award* at 11-12 ("The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements."); *AT&T Arbitration Award* at 16 ("Section 252 endows us with arbitration and enforcement authority over all Section 251 agreements").

<sup>25</sup> *CBT Rehearing Award* at 11-12.



relating to interconnection under 251(a), [the Commission is] not prohibited from applying Section 251(a).”<sup>26</sup>

**I. ISSUE 1: WHERE SHOULD THE POINTS OF INTERCONNECTION BE LOCATED AND WHAT TERMS AND CONDITIONS SHOULD APPLY WITH REGARD TO INTERCONNECTION AND TRANSPORT OF TRAFFIC?**

**ISSUE 5: HOW SHOULD THE PARTIES ROUTE 911/E-911 CALLS TO EACH OTHER?**

Verizon’s attempt to offhandedly dismiss the point of interconnection (“POI”) arrangements previously adopted by the Commission for the exchange of 911 traffic should be rejected.<sup>27</sup> Verizon presents no reason why the Commission should deviate from the outcomes in the *Embarq*, *CBT*, and *AT&T* arbitration proceedings.<sup>28</sup> Consistent with those decisions, the

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<sup>26</sup> *AT&T Arbitration Award* at 16; see also California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Approving Arbitrated Interconnection Agreement as Amended (C.P.U.C. Aug. 24, 2006) (“An indirect interconnection right is given to each [competitive local exchange carrier] that the [incumbent local exchange carrier] cannot by itself deny or vacate. The [incumbent local exchange carrier] has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated.”); Illinois Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff’d Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007); Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (I.U.B. Mar. 24, 2006) (finding rural carriers must interconnect with Sprint pursuant to Section 251(a) and arbitrating those interconnection agreements); New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005), *aff’d Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006); Intrado Comm Brief at 12 (discussing other court and state commission decisions consistent with the Commission’s conclusions).

<sup>27</sup> Verizon Brief at 21.

<sup>28</sup> Verizon’s claim that Embarq and CBT “agreed to” establish a POI on Intrado Comm’s network is misplaced. Neither Embarq nor CBT agreed to establish a POI on Intrado Comm’s network pursuant to Section 251(c), and thus there was a need for the Commission to resolve the particular dispute that exists in this case. *Cf.* Verizon Brief at 22. Moreover, AT&T never agreed to establish a POI on Intrado Comm’s network under any circumstances.

POI should be located at the selective router of the 911/E-911 network provider.<sup>29</sup> Thus, Verizon “should deliver its end users’ 911 calls destined for PSAP customers of Intrado to Intrado’s selective router serving that PSAP” and “Intrado should deliver its end users’ 911 calls destined for PSAP customers of [Verizon] to [Verizon’s] selective router serving that PSAP”<sup>30</sup> with “each party bear[ing] the cost of getting to the point of interconnection.”<sup>31</sup>

The Commission’s previous findings are on par with the determination by the Federal Communications Commission (“FCC”) that the “cost-allocation point” for 911 traffic should be at the selective router.<sup>32</sup> Verizon’s characterization of the FCC’s *King County Order* as “an alleged FCC determination” is inaccurate.<sup>33</sup> The *King County Order* specifically addresses the placement of the POI for the exchange of 911 traffic.<sup>34</sup> As Verizon itself admits, the location of the POI directly affects each Party’s costs and therefore establishes the “cost-allocation point” in the network as that term is used in the *King County Order*.<sup>35</sup>

In addition, the Commission should reject Verizon’s suggestion that the POI and dedicated trunking arrangements Verizon has established within its own network for 911/E-911 traffic are not relevant or different.<sup>36</sup> The Commission’s decisions in the *Embarq*, *CBT*, and *AT&T* proceedings correctly recognize that 911 traffic has traditionally been treated differently

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<sup>29</sup> *Embarq Arbitration Award* at 33.

<sup>30</sup> *AT&T Arbitration Award* at 32.

<sup>31</sup> *Embarq Arbitration Award* at 33.

<sup>32</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) (“*King County Order*”); see also Intrado Comm Brief at 17-18.

<sup>33</sup> Verizon Brief at 20.

<sup>34</sup> Cf. Verizon Brief at 20.

<sup>35</sup> Verizon Brief at 8 (“The location of the POI is a significant issue in part because the POI is the demarcation of financial responsibility; each carrier is financially responsible for the facilities to deliver its traffic to the POI.”).

<sup>36</sup> Verizon Brief at 15 (“there are no special interconnection requirements for 911 traffic”).

than plain old telephone service (“POTS”) traffic. Indeed, the POI arrangements adopted by the Commission in the three previous arbitration proceedings are consistent with the arrangements Verizon has implemented within its own network for the delivery of its end users’ 911 calls to Verizon PSAP customers and those arrangements Verizon requires of competitors seeking to terminate their end users’ 911 calls to Verizon PSAP customers.<sup>37</sup> Verizon’s template interconnection agreement compels competitors to interconnect at every Verizon selective router to deliver 911 calls to Verizon’s PSAP customers if they want their customers’ 911 calls to be completed to Verizon served PSAPs.<sup>38</sup> Further, Verizon’s template interconnection agreement requires competitors to interconnect to those selective routers using dedicated direct trunking.<sup>39</sup> Verizon admitted that competitors have routinely accepted the network interconnection arrangements contained in Verizon’s template agreement for 911 traffic.<sup>40</sup> The record therefore reflects that Verizon itself has treated 911 traffic differently than POTS traffic for reliability and redundancy purposes.<sup>41</sup>

Many of the Intrado Comm proposed interconnection arrangements Verizon criticizes are arrangements also found in Verizon’s 911 interconnection language. For example, Verizon claims that Intrado Comm is forcing Verizon to bear the costs of transporting 911 calls to Intrado Comm’s network when Intrado Comm is serving the PSAP to which the call is directed.<sup>42</sup> Yet

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<sup>37</sup> Intrado Comm Brief at 18-19; *see also* Transcript at 97, lines 14-19 (D’Amico).

<sup>38</sup> Intrado Comm Brief at 18-19; *see also* Transcript at 158, lines 13-16 (Sannelli).

<sup>39</sup> Hicks at Attachment 1, 911 Attachment § 4.

<sup>40</sup> Intrado Comm Brief at 38-40; *see also* Transcript at 100, lines 22-24 (D’Amico) (“I’m not aware of any CLECs or wireless carriers that have elected not to adopt that language or use that language.”).

<sup>41</sup> Transcript at 166, lines 22-23 (Sannelli) (stating that Verizon’s current call delivery method is “the most cost effective and reliable way of doing it”); Transcript at 102, lines 21-23 (D’Amico) (“I think the goal of everyone is to have service quality for 9-1-1. It’s a very important issue.”); Transcript at 152, lines 5-7 (Sannelli) (“We do our utmost best to have an extremely reliable and efficient 9-1-1 system that routes calls to the correct PSAP.”).

<sup>42</sup> *See, e.g.*, Verizon Brief at 19.

Verizon admits that competitors are not compensated when Verizon requires those carriers to transport their end users' 911 calls to the appropriate Verizon selective router.<sup>43</sup> Once a public safety agency designates a competitive carrier like Intrado Comm as its 911/E-911 service provider, Verizon is put in the position of any other carrier with obligations to deliver its end users' 911 traffic over dedicated direct trunks to the appropriate selective router serving the PSAP to which the 911 call is directed.<sup>44</sup>

Verizon also complains that Intrado Comm's language would require Verizon to interconnect to Intrado Comm's network at unspecified locations.<sup>45</sup> Yet Verizon's interconnection agreement language does not specify the locations of the POIs Verizon seeks to have Intrado Comm establish; instead, the language merely states that Intrado Comm must interconnect "on Verizon's network."<sup>46</sup> And Intrado Comm has no idea where Verizon's selective routers will be located in Ohio given that Verizon is replacing all of its selective routers in Ohio,<sup>47</sup> which will require all carriers in Ohio to re-deploy direct dedicated trunks to those new selective routers.<sup>48</sup>

Verizon does not deny that its proposals would undermine Intrado Comm's right to interconnection that is equal in quality; rather, it claims that the equal in quality requirements do not apply to Intrado Comm's proposals.<sup>49</sup> Verizon is wrong. The equal in quality requirements pertain to the design of interconnection facilities and arrangements as compared to those same

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<sup>43</sup> Intrado Comm Brief at 18-19; *see also* Transcript at 119, line 117 to 120, line 21 (D'Amico).

<sup>44</sup> *Embarq Arbitration Award* at 8.

<sup>45</sup> Verizon Brief at 29.

<sup>46</sup> *See, e.g.*, Blackline ICA § 1.3.1.

<sup>47</sup> Transcript at 159, line 16 to 160, line 2 (Sannelli).

<sup>48</sup> Transcript at 161, lines 4-10 (Sannelli); *see also* Verizon Panel Testimony at 14, lines 290-92.

<sup>49</sup> Verizon Brief at 12-13.

facilities and arrangements in the incumbent's network.<sup>50</sup> Importantly, this obligation is not limited to a consideration of service quality as perceived by end users, but also includes service quality as perceived by Intrado Comm as the requesting carrier.<sup>51</sup> Where the POI is located and how traffic gets to that POI clearly implicates interconnection design as perceived by Intrado Comm.

But that is not all the equal in quality requirement is intended to address. In implementing rules for the 1996 amendments to the Act, the FCC noted that the imposition of disparate conditions between carriers on the pricing and ordering of services would violate the equal in quality requirement.<sup>52</sup> Such a condition has nothing to do with the limits Verizon attempts to put on the requirement, *i.e.*, the design of interconnection facilities or “technical standards.”<sup>53</sup> Indeed, the FCC has recognized that the equal in quality requirement of the Act entitles competitors to receive interconnection for 911/E-911 services in the same manner that incumbents provide such service to themselves (*i.e.*, parity).<sup>54</sup> Moreover, the FCC specifically determined that Section 251(c)(2) requires ILECs like Verizon to provide competitors like Intrado Comm interconnection that is at least equal in quality to the interconnection Verizon provides itself for routing 911 and E-911 calls to PSAPs.<sup>55</sup>

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<sup>50</sup> *Local Competition Order* ¶ 224.

<sup>51</sup> 47 C.F.R. § 51.305(a)(3).

<sup>52</sup> *Local Competition Order* ¶ 224.

<sup>53</sup> Verizon Brief at 12-13.

<sup>54</sup> *Local Competition Order* ¶ 16.

<sup>55</sup> *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, 17 FCC Rcd 27039, ¶ 652 (2002) (“Virginia Arbitration Order”).

Interconnection must be provided to a competitor “in a manner no less efficient than the way in which the [incumbent] provides the comparable function to its own retail operations.”<sup>56</sup> Section 251(c)(2) of the Act was intended to prevent an incumbent from discriminating between itself and a requesting competitor with respect to the quality of the interconnection provided.<sup>57</sup> Verizon’s attempt to shun its responsibilities under the Act should therefore be rejected.<sup>58</sup>

Finally, Verizon’s unsupported and unsubstantiated claims regarding the potential cost to implement Intrado Comm’s interconnection proposals should also be rejected.<sup>59</sup> While Verizon claims Intrado Comm should be responsible for any “expensive” form of interconnection it requests,<sup>60</sup> Verizon has provided no evidence supporting its allegation that implementation of Intrado Comm’s proposals would impose cost on Verizon. The sole consideration is whether Intrado Comm’s interconnection proposals are technically feasible. Under the FCC’s rules, the determination of technical feasibility does not include consideration of economic concerns.<sup>61</sup> Once Intrado Comm has demonstrated that its proposal is technically feasible, the burden shifts to Verizon to demonstrate, by clear and convincing evidence, that the proposal is not technically feasible or that “specific and significant adverse impacts” would result from Intrado Comm’s

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<sup>56</sup> *Local Competition Order* ¶ 218.

<sup>57</sup> *Iowa Util. Bd. v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000).

<sup>58</sup> Verizon’s claim that Congress “already decided” that there is no conflict between interconnecting on the ILEC network and the equal in quality requirement should likewise be rejected. *See* Verizon Brief at 14. First and foremost, Verizon provides no citation or support for its proposition. Further, there is no evidence that Congress considered 911 interconnection arrangements or the existing ILEC arrangements for such services when developing Section 251(c). Moreover, it is well-established that the Act is not a “model of clarity.” *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999).

<sup>59</sup> Verizon Brief at 30-31.

<sup>60</sup> Verizon Brief at 30.

<sup>61</sup> 47 C.F.R. § 51.5 (defining technical feasibility).

requested interconnection arrangement.<sup>62</sup> Verizon has not met that burden here and thus its unsubstantiated claims should be rejected.

**II. ISSUE 2: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911/E-911 CALLS BETWEEN THE PARTIES?**

Intrado Comm’s Initial Brief addressed the majority of Verizon’s arguments with respect to inter-selective router trunking,<sup>63</sup> and therefore, Intrado Comm only responds to those new issues raised by Verizon in its Initial Brief. All of Verizon’s arguments should be summarily rejected,<sup>64</sup> including those new arguments raised in Verizon’s Initial Brief. This Commission has twice concurred with Intrado Comm that interconnection agreements “should contain the framework for interconnection and interoperability of the parties’ 911 networks through inter-selective routing. . . . to ensure inter-selective router capabilities can be provisioned once requested by an Ohio county or PSAP.”<sup>65</sup>

Verizon is wrong when it says call transfer capability does not “even involve interconnection with the public switched telephone network [“PSTN”]”<sup>66</sup> The 911 network is interconnected to the PSTN as recognized by the FCC,<sup>67</sup> and a wireless or wireline 911 call originates on the PSTN. Moreover, origination on the PSTN is not the determination of whether a service is a telephone exchange service for the purposes of Section 251(c)(2).<sup>68</sup> The FCC has

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<sup>62</sup> *Local Competition Order* ¶¶ 198, 203.

<sup>63</sup> Intrado Comm Brief at 29-34.

<sup>64</sup> Intrado Comm Brief at 29-34.

<sup>65</sup> *AT&T Arbitration Award* at 38; *Embarq Arbitration Award* at 36.

<sup>66</sup> Verizon Brief at 25.

<sup>67</sup> 47 C.F.R. § 9.3 (defining wireline E-911 network); *see also E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 15 (2005) (“*VoIP E911 Order*”).

<sup>68</sup> *Cf.* Verizon Brief at 25.

explicitly stated that it “has never suggested that the telephone exchange service definition is limited to voice communications provided over the public circuit-switched network.”<sup>69</sup> Rather, the FCC found that telephone exchange service includes “the provision of alternative local loops for telecommunications services, separate from the public switched telephone network, in a manner ‘comparable’ to the provision of local loops by a traditional local telephone exchange carrier.”<sup>70</sup>

Further, Verizon wrongly assumes that it would have to pay for any inter-selective router capabilities requested by the Parties’ PSAP or government municipality customers.<sup>71</sup> Today, a government municipality or PSAP requesting call transfer capabilities is responsible for paying for that service just like any other service the customer requests. Verizon’s own tariff contains a specific charge for call transfer services.<sup>72</sup> Moreover, the Commission has recognized that inclusion in the interconnection agreement of Intrado Comm’s proposed terms and conditions for inter-selective router trunking would not preclude Verizon from receiving compensation for implementing PSAP-to-PSAP call transfers when it provides such functionality.<sup>73</sup> Thus, there is no factual or legal support for Verizon’s contention that Intrado Comm’s proposed language would require Verizon to pay for the implementation of inter-selective router capabilities.

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<sup>69</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 20 (1999) (“*Advanced Services Order*”).

<sup>70</sup> *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶ 54 (1998) (emphasis added).

<sup>71</sup> Verizon Brief at 25.

<sup>72</sup> Currier at Attachment 2 (providing relevant portions of Verizon’s tariff).

<sup>73</sup> *AT&T Arbitration Award* at 38.



### **III. ISSUE 3: WHETHER THE FORECASTING PROVISIONS SHOULD BE RECIPROCAL?**

Verizon incorrectly assumes that reciprocal forecasting language is not necessary because there will be no 911 calls flowing from Intrado Comm to Verizon.<sup>74</sup> As discussed in Intrado Comm's Initial Brief, there are likely to be numerous 911 calls flowing between the Parties' networks due to the popularity of mobile technologies and other types of calls that will need to be exchanged between the Parties' PSAP customers.<sup>75</sup> Moreover, Intrado Comm's pending CLEC certification will be effective shortly, which will permit Intrado Comm to expand the services it offers to consumers in Ohio.<sup>76</sup> Thus, the inclusion of reciprocal forecasting language in the Parties' interconnection agreement will become even more important in the future. Accordingly, Intrado Comm's proposed language should be adopted.

### **IV. ISSUE 7: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES AND IF SO, WHAT THOSE PROVISIONS SHOULD BE**

Intrado Comm has not acknowledged that automatic location information ("ALI") is an information service when provided in conjunction with a complete 911/E-911 service as Verizon claims.<sup>77</sup> There are three integrated components that are necessary to provide 911/E-911 service – the selective router, the database system that retains the ALI, and the transport of the 911 call to the PSAP. Under FCC precedent, *stand-alone* ALI may be viewed as an information service.<sup>78</sup> But Intrado Comm's request for ALI steering capabilities has nothing to do with

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<sup>74</sup> Verizon Brief at 26.

<sup>75</sup> Intrado Comm Brief at 36.

<sup>76</sup> *AT&T Arbitration Award* at 27 (discussing Intrado Comm's pending certification).

<sup>77</sup> Verizon Brief at 37.

<sup>78</sup> *Bell Operating Companies Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 17 (1998) ("*Forbearance Order*"). However, in a carrier-to-carrier relationship pursuant to Section 251, ALI databases are considered to be

stand-alone ALI functions. ALI steering is needed to ensure interoperability between the Parties' 911 networks as contemplated by Section 251(c).<sup>79</sup> The switching and transmission components would be useless without the ALI functions, and 911 call routing to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records. The FCC also has recognized that all of the various components come together to form an all-inclusive service offering known as the "wireline E-911 network."<sup>80</sup> The transfer of ALI information between the Parties is an integral component of the 911/E-911 service each Party provides to its PSAP customers and is therefore appropriate to include in the Parties' interconnection agreement.

Further, the existing commercial agreement between Intrado Comm's affiliate and Verizon does not address the arrangements Intrado Comm seeks here.<sup>81</sup> That commercial agreement does not govern the exchange of 911/E-911 service calls pursuant to a Section 251 interconnection agreement between carriers, which is under review here. Interoperability between the Parties' networks, including the exchange of ALI, is a key component of ensuring Ohio PSAPs have adequate call transfer capabilities and that Ohio consumers' 911 calls reach the appropriate PSAP.<sup>82</sup> Accordingly, Intrado Comm's proposed language should be adopted.

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telecommunications services that ILECs are required to offer on an unbundled basis. *See* 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 557 (2003) ("*Triennial Review Order*"), *aff'd in part, remanded in part, vacated in part*, *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 587 (D.C. Cir. 2004) (subsequent history omitted).

<sup>79</sup> 47 U.S.C. § 251(c)(5).

<sup>80</sup> *VoIP E911 Order* ¶ 15 (finding the Wireline 911 Network consists of the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the SRDB, the trunk line(s) between the ALI database and the PSAP, and the MSAG).

<sup>81</sup> Verizon Brief at 37.

<sup>82</sup> Intrado Comm Brief at 48-50.

V. **ISSUE 10: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E-911 RELATED SERVICES AND WHAT SHOULD INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES?**

**ISSUE 11: WHETHER ALL “APPLICABLE” TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT, WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES MAY AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO “TBD” RATES SHOULD BE INCLUDED IN THE AGREEMENT**

**ISSUE 12: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS**

Verizon has presented no reason for the Commission to deviate from its findings in the *Embarq*, *CBT*, and *AT&T* arbitration proceedings that Intrado Comm’s proposed interconnection rates should be included in the interconnection agreement to govern those instances when Verizon will be interconnecting to Intrado Comm’s network.<sup>83</sup> The Commission has made clear that Intrado Comm’s proposed rates are “reasonable”<sup>84</sup> and that “when Intrado is the designated 911/E911 service provider, the interconnection agreement should contain rates, such as port charges, for [Verizon]’s interconnection to Intrado’s network.”<sup>85</sup>

Further, there is no requirement that Intrado Comm “benchmark” its rates based on Verizon’s rates.<sup>86</sup> Similar to the findings of the Wireline Competition Bureau of the FCC and numerous other state commissions,<sup>87</sup> the Commission has confirmed that Intrado Comm is under

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<sup>83</sup> *Embarq Arbitration Award* at 8; *CBT Arbitration Award* at 21; *AT&T Arbitration Award* at 17, 21.

<sup>84</sup> *CBT Arbitration Award* at 21.

<sup>85</sup> *AT&T Arbitration Award* at 17.

<sup>86</sup> Verizon Brief at 44-45.

<sup>87</sup> *Virginia Arbitration Order* ¶¶ 581-89; *see also* Intrado Comm Brief at 60-61.

no obligation to mirror Verizon's interconnection rates.<sup>88</sup> The "benchmark" requirements cited by Verizon apply only to the rates for intercarrier compensation, not rates for interconnection.<sup>89</sup>

The Commission has also confirmed that Intrado Comm is entitled to Section 252(d) pricing for interconnection and network element charges, transport and termination charges, and wholesale charges.<sup>90</sup> Therefore, tariffs developed outside of the 252 process are not the appropriate mechanism for determining what Verizon may charge Intrado Comm under the Parties' interconnection agreement for interconnection-related services.<sup>91</sup> Intrado Comm, however, is not trying to "circumvent" Verizon's tariffs as Verizon suggests.<sup>92</sup>

Intrado Comm recognizes there may be non-252(d)(1) services that Intrado Comm will purchase from Verizon and that such services will not be priced pursuant to total element long-run incremental cost ("TELRIC") as required by Section 252.<sup>93</sup> Those services and the related pricing must also be identified with specificity in the interconnection agreement if they are to be applied to any services under the agreement. Intrado Comm understands that it is efficient to refer to the Parties' tariffs for specific services rather than repeat those terms and conditions in the interconnection agreement. Intrado Comm, however, seeks certainty in the Parties' interconnection relationship and cannot agree to unspecified terms and conditions that Verizon may later determine are "applicable" to the services being offered in the interconnection agreement.<sup>94</sup> If Verizon seeks to have a specific tariff apply to the interconnection agreement for

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<sup>88</sup> *AT&T Arbitration Award* at 21; *see also CBT Arbitration Award* at 21.

<sup>89</sup> *AT&T Arbitration Award* at 21; *see also* Intrado Comm Brief at 60.

<sup>90</sup> *AT&T Arbitration Award* at 20-21; *see also* 47 U.S.C. § 252(d).

<sup>91</sup> *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008).

<sup>92</sup> Verizon Brief at 41.

<sup>93</sup> Intrado Comm Brief at 58-59; *see also AT&T Arbitration Award* at 21.

<sup>94</sup> Intrado Comm Brief at 59.

a non-252(d)(1) service, it should identify that tariff in the agreement rather than a generic reference to “applicable” tariffed rates as Verizon proposes.

**VI. IN MANY INSTANCES, VERIZON’S BRIEF PROVIDES LITTLE, IF ANY, LEGAL OR FACTUAL SUPPORT FOR ITS PROPOSED LANGUAGE (ARBITRATION ISSUES 4, 6, 8, 9, 13, 14, 15, AND 16)**

For a significant majority of the outstanding issues between the Parties, Verizon’s Initial Brief provides nothing new beyond its pre-filed testimony. As Intrado Comm explained in its Initial Brief, Intrado Comm’s proposed language for each of these issues is reasonable and consistent with law or established industry practices.<sup>95</sup> Verizon has provided no record or legal support otherwise. Accordingly, Intrado Comm’s proposed language for these issues should be adopted.

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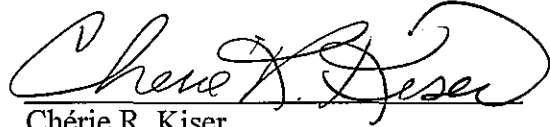
<sup>95</sup> Intrado Comm Brief at 37 (addressing Issue 4), 47-48 (addressing Issue 6), 50-52 (addressing Issue 8), 61-63 (addressing Issue 13), 63-65 (addressing Issue 14), 65-67 (addressing Issue 15), 67-68 (addressing Issue 16).

## CONCLUSION

For the foregoing reasons and those contained in Intrado Comm's Initial Brief, Intrado Comm respectfully requests that the Commission adopt Intrado Comm's positions and proposed contract language as set forth herein and in the Joint Issues Matrix.

Respectfully submitted,

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Its Attorneys

**CERTIFICATE OF SERVICE**

I, Angela F. Collins, certify that on this 6th day of March 2009, the foregoing Reply Brief of Intrado Communications Inc. was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio and one (1) copy was served on each of the following via electronic mail.



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# Attachment 1



**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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|   |   |                    |
|---|---|--------------------|
| In the Matter of the Petition of Intrado Inc. for | ) |                    |
| Arbitration Pursuant to Section 252(b) of the     | ) |                    |
| Communications Act of 1934, as amended, to        | ) | Docket No. 08-0545 |
| Establish an Interconnection Agreement with       | ) |                    |
| Illinois Bell Telephone Company d/b/a             | ) |                    |
| AT&T Illinois                                     | ) |                    |

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**Intrado Inc. Brief on Exceptions**

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## **Table of Contents**

|  | <b><u>Page</u></b> |
|--|--------------------|
| <b>ARGUMENT.....</b>   | <b>3</b>           |
| <b>I. THE PROPOSED ARBITRATION DECISION SHOULD BE REJECTED BECAUSE IT MISCONSTRUES FEDERAL LAW WITH RESPECT TO THE DEFINITION OF TELEPHONE EXCHANGE SERVICE.....</b> | <b>3</b>           |
| <b>II. IN THE ALTERNATIVE, THE COMMISSION SHOULD DIRECT THE ALJS TO ARBITRATE THE OUTSTANDING ARBITRATION ISSUES PURSUANT O TO SECTION 251(a) OF THE ACT .....</b>   | <b>6</b>           |
| <b>CONCLUSION .....</b>  | <b>11</b>          |
| <b>CERTIFICATE OF SERVICE</b>  |                    |

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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|   |   |                    |
|---|---|--------------------|
| In the Matter of the Petition of Intrado Inc. for | ) |                    |
| Arbitration Pursuant to Section 252(b) of the     | ) |                    |
| Communications Act of 1934, as amended, to        | ) | Docket No. 08-0545 |
| Establish an Interconnection Agreement with       | ) |                    |
| Illinois Bell Telephone Company d/b/a             | ) |                    |
| AT&T Illinois                                     | ) |                    |

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**Intrado Inc. Brief on Exceptions**

Intrado Inc. (“Intrado”), by its attorneys, hereby submits its Brief on Exceptions in connection with Intrado’s Petition for Arbitration (“Petition”) to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois (“AT&T”) pursuant to Section 252(b) of the Communications Act of 1934, as amended (“Act”).<sup>1</sup> The Illinois Commerce Commission (“Commission”) should adopt the exceptions set forth herein, reject the finding in the Proposed Arbitration Decision (“PAD”)<sup>2</sup> that Intrado does not offer telephone exchange service because it is based on an erroneous interpretation of federal law, and direct the Administrative Law Judges (“ALJs”) to arbitrate the remaining unresolved issues pursuant to Section 251(c) and, as necessary, Section 251(a) of the Act.

Intrado’s 911 service satisfies each prong of the telephone exchange service definition as interpreted by the Federal Communications Commission (“FCC”) because it allows Intrado’s public safety answering point (“PSAP”)<sup>3</sup> customers to receive 911 calls and intercommunicate

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<sup>1</sup> 47 U.S.C. § 252(b).

<sup>2</sup> Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Proposed Arbitration Decision (Feb. 13, 2009) (“PAD”).

<sup>3</sup> For ease of reference, Intrado uses the term “PSAP” to refer to any Illinois public safety agency, Emergency Telephone System Board, or other entity that may be responsible for purchasing 911/E911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

with all 911 callers programmed to reach the particular PSAP. In the alternative, the Commission should direct the ALJs to grant Intrado's request for an interconnection agreement consistent with Intrado's positions and proposed interconnection agreement language for all unresolved issues pursuant to Section 251(a) of the Act. As the PAD acknowledges, Intrado is a telecommunications carrier<sup>4</sup> and interconnection is a duty of all telecommunications carriers under Section 251(a) regardless of whether they offer "telephone exchange service."<sup>5</sup> As explained below, the Commission has previously recognized the public benefit of regulating 911 services as well as its authority to arbitrate and oversee 251(a) interconnection agreements. The Commission should therefore direct the ALJs to arbitrate the remaining issues between the Parties pursuant to either Section 251(c), Section 251(a), or both. Such a ruling will promote the goals of the Act by removing the barriers to entry erected by AT&T and the PAD.<sup>6</sup>

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<sup>4</sup> PAD at n.3 ("Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services."); *see also* Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Order (Dec. 20, 2000); Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Amendatory Order (Jan. 31, 2001); *SCC Communications Corp. Name Change to Intrado, Inc.* (filed Oct. 11, 2001).

<sup>5</sup> PAD at 3; *see also* 47 U.S.C. § 251(a) (setting forth the interconnection obligation of all telecommunications carriers); 47 U.S.C. § 153(47) (defining "telephone exchange service").

<sup>6</sup> 47 U.S.C. § 251. Section 251 was intended to facilitate "[v]igorous competition," which Congress understood "would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [incumbent carriers]." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 16 (1996) ("Local Competition Order") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). The process established by Section 251 and the FCC's implementing rules eliminates these barriers to entry to give competitors like Intrado "a fair opportunity to compete" in the marketplace. *See id.* ¶ 18. The opening of the local exchange market to competition was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets." *Id.* ¶ 4. To ensure that the competition contemplated by Section 251 would flourish, the Act specifically condemns state statutes, regulations, or legal requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). Thus, no state may "erect legal barriers to entry to telecommunications markets that would frustrate the 1996 Act's explicit goal of opening local markets to competition." *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e) and 253*, 13 FCC Rcd 16400, ¶ 8 (1998).

## ARGUMENT

### **I. THE PROPOSED ARBITRATION DECISION SHOULD BE REJECTED BECAUSE IT MISCONSTRUES FEDERAL LAW WITH RESPECT TO THE DEFINITION OF TELEPHONE EXCHANGE SERVICE**

Interconnection pursuant to Section 251(c)(2) of the Act requires a carrier to provide “telephone exchange service” or “exchange access” as defined in the Act.<sup>7</sup> The PAD correctly recognizes that the Act’s definition of “telephone exchange service” presents two alternative meanings and a carrier’s service can qualify as telephone exchange service under either alternative.<sup>8</sup> The PAD also correctly determines that Intrado’s 911 service satisfies the “within a telephone exchange” and “exchange service charge” requirements of the telephone exchange service definition.<sup>9</sup> The PAD further recognizes that to “minimize the potential for error, failure or overload, [Intrado’s 911 service] telecommunications path is *not* designed for calls in the opposite direction.”<sup>10</sup> The PAD further concludes that Intrado’s 911 service design as “a terminating only service” that prohibits outbound calls on 911 circuits is consistent with the Illinois rules for a carrier to provide 911 services.<sup>11</sup>

Thus, despite the PAD’s finding that Intrado’s 911 service meets all of these other qualities of the federal definition and Illinois rules, the PAD incorrectly interprets federal law with respect to the “intercommunication” prong of the federal definition.<sup>12</sup> Specifically, the PAD states that call transfer “reroutes a call originated by the person placing the inbound call to

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<sup>7</sup> 47 U.S.C. § 251(c)(2).

<sup>8</sup> PAD at 6.

<sup>9</sup> PAD at 15-16, 16-17.

<sup>10</sup> PAD at 7 (emphasis added).

<sup>11</sup> PAD at 7; *see also* 83 ILL. ADM. CODE 725.500(a), (d).

<sup>12</sup> PAD at 12.

the PSAP”<sup>13</sup> and concludes that Intrado’s call transfer capability does not satisfy the intercommunication test set forth in the FCC’s *Directory Assistance Order*.<sup>14</sup> The PAD’s discussion of the intercommunication prong, however, wrongly fixates on the transfer of 911 calls rather than the service being purchased by the PSAP. The finding that Intrado does not offer telephone exchange service should therefore be rejected.

The PSAP is purchasing 911 service from Intrado so that it can receive calls from all 911 callers programmed to reach that PSAP, *i.e.*, so that the PSAP can intercommunicate with those 911 callers. Indeed, in another section of the PAD, the ALJs recognize that the “core purpose” of 911 service “is to link the caller to the responders that can most quickly and readily provide assistance.”<sup>15</sup> Yet, when evaluating whether Intrado’s service provides intercommunication, the ALJs ignore this critical “core purpose” of the service.

As required by the FCC’s *Directory Assistance Order*,<sup>16</sup> Intrado’s 911 service interconnects all 911 callers in a specific geographic area to the PSAP responsible for receiving those 911 calls.<sup>17</sup> The PAD’s conclusion that Intrado’s 911 service “enables communication only with a predetermined PSAP”<sup>18</sup> ignores the nature of the service being purchased by the PSAP. Analysis of Intrado’s 911 service should not be from the perspective of the 911 caller. The relevant inquiry is whether Intrado’s customer (end user/PSAP) purchasing the 911 service will receive the intercommunication it seeks with the 911 callers needing to reach emergency

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<sup>13</sup> PAD at 8.

<sup>14</sup> PAD at 12.

<sup>15</sup> PAD at 15-16.

<sup>16</sup> *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 (2001) (“*Directory Assistance Order*”).

<sup>17</sup> Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; *see also* *Directory Assistance Order* ¶¶ 17, 21; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶¶ 17, 23, 30 (1999) (“*Advanced Services Order*”).

<sup>18</sup> PAD at 12.

assistance. It makes no difference whether the “end-user” can communicate with any other entity via 911 dialing;<sup>19</sup> it only matters whether the PSAP can communicate with any person dialing 911 to reach that PSAP.

As the FCC has determined, a service satisfies the “intercommunication” requirement “as long as it provides customers with the capability of intercommunicating with other subscribers.”<sup>20</sup> Intrado’s 911 service ensures that its PSAP customers are able to communicate with those making 911 calls. By virtue of Intrado’s 911 service, PSAPs are able to communicate with others within a local calling area, which is a hallmark of “intercommunication.”<sup>21</sup>

Further, the PAD’s conclusion that transport of 911 calls from an incumbent local exchange carrier (“ILEC”) 911 tandem to a terminating PSAP is not intercommunication is irrelevant.<sup>22</sup> As explained above, the relevant communication is that which occurs between the 911 caller on one end of the call and Intrado’s PSAP customer on the other end of the call, not a portion of the transmission between an ILEC 911 tandem and a PSAP. Transport of a call between two entities (*i.e.*, two customers) is intercommunication regardless of the type of call that is being transported because it “permit[s] communications among subscribers within an exchange or within a connected system of exchanges.”<sup>23</sup> The fact that Intrado will pick up the 911 call at the ILEC’s selective router does not change the intercommunication provided to Intrado’s PSAP customer and 911 callers or vice versa when the ILEC is the 911 system provider that Intrado 911 callers must reach. Indeed, all competitors routinely pick up plain old telephone

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<sup>19</sup> Cf. PAD at 12.

<sup>20</sup> *Advanced Services Order* ¶ 23.

<sup>21</sup> *Directory Assistance Order* ¶ 21; *see also* PAD at 15 (“There is no question that Intrado’s 911 service will facilitate 911 calls that originate and terminate within the same exchange area.”).

<sup>22</sup> PAD at 14.

<sup>23</sup> *Advanced Services Order* ¶ 20.

service (“POTS”) calls at an ILEC tandem and transport those calls to their customer or deliver 911 calls to ILEC selective routers for delivery to ILEC PSAP customers. Intrado’s interconnection arrangement for 911 service to its PSAP customers will be no different. Thus, the remaining unresolved issues should be addressed pursuant to Section 251(c) of the Act and, to the extent necessary, Section 251(a) of the Act.

## **II. IN THE ALTERNATIVE, THE COMMISSION SHOULD DIRECT THE ALJS TO ARBITRATE THE OUTSTANDING ARBITRATION ISSUES PURSUANT TO SECTION 251(A) OF THE ACT**

Under Section 251(a) of the Act, all telecommunications carriers are required to interconnect directly or indirectly with all other telecommunications carriers.<sup>24</sup> As the Commission has previously found, this section of the Act “contains no restrictions on who may interconnect with whom.”<sup>25</sup> Thus, there is no requirement that a carrier provide telephone exchange service or any service other than telecommunications service to obtain interconnection under Section 251(a).<sup>26</sup>

The PAD wrongly concludes that Section 251(a) is not at issue in this proceeding.<sup>27</sup> Intrado’s Petition for Arbitration contemplated a review of the outstanding issues between the Parties pursuant to Sections 251 and 252 of the Act. Indeed, Intrado invoked Section 251

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<sup>24</sup> 47 U.S.C. § 251(a); *see also* Transcript at 139 (Pellerin) (AT&T’s witness noting that “all telecommunications carriers have obligations under 251A”).

<sup>25</sup> Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff’d Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007).

<sup>26</sup> It is not disputed that Intrado qualifies as a telecommunications carrier. The PAD recognizes that Intrado is certificated by the Commission to provide intrastate facilities-based and resold local and interexchange telecommunications services. *See* PAD at n.3.

<sup>27</sup> PAD at n.14.



generally when it made its negotiation request to AT&T.<sup>28</sup> Further, the issue of whether Intrado is entitled to Section 251(c) interconnection or some other form of interconnection has been discussed at length in this proceeding. AT&T acknowledged that its proposal for a “commercial agreement” could be a Section 251(a) agreement.<sup>29</sup> Moreover, AT&T urged the ALJs to adopt the findings of the Florida commission, which determined that AT&T and Intrado could negotiate an interconnection agreement pursuant to Section 251(a) in Florida.<sup>30</sup>

While Intrado is entitled to interconnection under 251(c) as explained above, the issue of whether AT&T and Intrado’s interconnection agreement should be established pursuant to Section 251(a) is squarely before the Commission and the Commission has recognized its authority to analyze interconnection requests under Section 251(a) in the past. In the arbitration proceedings between Sprint and several rural carriers, the Commission recognized that the rural carriers were required to negotiate interconnection terms and conditions with Sprint pursuant to Section 251(a)<sup>31</sup> and subsequently arbitrated the interconnection agreements between Sprint and

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<sup>28</sup> Letter from Thomas Hicks, Intrado, to AT&T Contract Manager (Apr. 11, 2008) (Attachment 2 to Intrado Petition for Arbitration) (requesting negotiation of an interconnection agreement in the state of Illinois pursuant to Section 251).

<sup>29</sup> Transcript at 132, lines 12-16 (Pellerin) (“AT&T has never taken the position that it was not willing to negotiate a commercial agreement with Intrado. Whether you refer to that as 251A agreement or not, I don’t have an opinion on that.”); Transcript at 139, lines 8-19 (Pellerin) (“Q: Does AT&T have any obligation to negotiate or interconnect with Intrado outside of Section 251? A: Well, I think we are here talking about Section 251C interconnection negotiations and arbitration. Beyond that, all telecommunications carriers have obligations under 251A. Q: So the commercial agreement that you believe should be entered into would be pursuant to 251A? A: Potentially.”).

<sup>30</sup> Transcript at 132, lines 7-11 (Pellerin) (“Q: The Staff recommendation, however, did determine that the parties can negotiate an interconnection agreement pursuant to Section 251A; is that correct? A: That’s my understanding.”).

<sup>31</sup> Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005).

those carriers pursuant to Section 251(a).<sup>32</sup> On review, the Commission's findings were upheld by the United States District Court for the Southern District of Illinois.<sup>33</sup>

The Commission's decisions in the interconnection proceedings between Sprint and the rural carriers are consistent with the findings of numerous other state commissions, including those in California, Indiana, Iowa, New York, North Dakota, and Washington.<sup>34</sup> Further, the Ohio commission recently found that it has authority to arbitrate and oversee all Section 251 interconnection agreements, not just those pertaining to Section 251(c).<sup>35</sup> Indeed, the Ohio

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<sup>32</sup> Docket No. 05-0402, *Sprint Communications L.P. d/b/a Sprint Communications Company L. P. Petition for Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers pursuant to Section 252 of the Telecommunications Act of 1996*, Arbitration Decision (Nov. 8, 2005).

<sup>33</sup> *Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007).

<sup>34</sup> See, e.g., California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Approving Arbitrated Interconnection Agreement as Amended (C.P.U.C. Aug. 24, 2006) ("An indirect interconnection right is given to each [competitive local exchange carrier] that the [incumbent local exchange carrier] cannot by itself deny or vacate. The [incumbent local exchange carrier] has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated."); Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc.*, Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (I.U.B. Mar. 24, 2006) (finding rural carriers must interconnect with Sprint pursuant to Section 251(a) and arbitrating those interconnection agreements); New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005), *aff'd Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C. May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).").

<sup>35</sup> Ohio Case No. 07-1216-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Award at 15 (Sept. 24, 2008) ("Ohio Embarq Arbitration Award") (Spence-Lenss Direct at Attachment No. 2).

commission found that “[e]ven though neither party raised the application of Section 251(a) as an issue, the [Ohio commission] is not barred by mere omission from applying applicable law [because the Ohio commission] has the authority and the requirement to consider Section 251(a) where it is applicable.”<sup>36</sup> Based on those findings, the Ohio commission determined that Section 251(a) along with its broad authority over 911 service supported the adoption of Intrado’s proposed interconnection arrangements.<sup>37</sup> Arbitration is clearly permitted for provisions outside of 251(c).<sup>38</sup>

Arbitration of Intrado’s interconnection agreement with AT&T pursuant to Section 251(a) will ensure that the Commission retains critical oversight over 911 interconnection and 911 services generally.<sup>39</sup> While the PAD proposes that the Commission reverse several of the conclusions in the *SCC Order*, the PAD does not address the significant public interest findings made by the Commission in that decision. Specifically, the Commission has already determined that it is “of the utmost importance that the continuance and quality of a 9-1-1 call be preserved and enhanced.”<sup>40</sup> As “a matter of public safety,” the Commission determined that competitive

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<sup>36</sup> Ohio Case No. 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Entry on Rehearing at 11-12 (Jan. 14, 2009) (“*Ohio CBT Rehearing Award*”)

<sup>37</sup> *Ohio Embarq Arbitration Award* at 15.

<sup>38</sup> See, e.g., *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) (“where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that any issue left open after unsuccessful negotiation would be subject to arbitration by the [state commission]”) (emphasis in original).

<sup>39</sup> Intrado Initial Brief at 28-30.

<sup>40</sup> Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (Mar. 21, 2001) (“*SCC Order*”).

911/E911 services should be regulated because the “public interest is protected when [such] services are regulated.”<sup>41</sup> The Commission reaffirmed these findings five years later:

The prospect of competitively offering E9-1-1 services is, from our perspective, a matter of far greater importance than the mere offering of local or interexchange retail service to customers. E9-1-1 service makes emergency, lifesaving protection available to every individual in even the most remote corners of the state. It further helps to safeguard residential and commercial property, protecting against the risk of loss of home or business. It is an indispensable lifeline for every individual present within Illinois.<sup>42</sup>

Thus, use of Section 251(a) is consistent with the public interest standards already established by the Commission.<sup>43</sup>

The Commission’s previous findings are also on par with those of the Public Utilities Commission of Ohio, which “highlight[ed] the importance of regulating competitive emergency services telecommunications carriers in light of the significant public interest surrounding the provision of 9-1-1 service.”<sup>44</sup> The Ohio commission found that “Commission oversight and resolution of disputes raised in [an arbitration] proceeding are of significant public interest due to the fact that the identified issues directly impact the provisioning of uninterrupted emergency 9-1-1 service.”<sup>45</sup> Accordingly, arbitration of Intrado’s interconnection agreement with AT&T pursuant to Section 251(a) is in the public interest.

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<sup>41</sup> SCC Order at 8.

<sup>42</sup> Docket No. 04-0406, *Ramsey Emergency Services, Inc. Application for a Certificate of Local Authority to Operate as a Provider of Telecommunications Services in All Areas in the State of Illinois*, Order at 13 (May 17, 2005), *aff’d Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

<sup>43</sup> See PAD at 18 (“The Commission is therefore receptive to statutory interpretation that advances the law’s intentions and enhances public safety.”).

<sup>44</sup> Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) (“*Ohio Certification Order*”), Order on Rehearing (Apr. 2, 2008) (“*Ohio Certification Rehearing Order*”).

<sup>45</sup> *Ohio Embarq Arbitration Award* at 15.

## **CONCLUSION**

For the foregoing reasons, Intrado respectfully requests that the Commission reject the PAD's finding that Intrado does not offer telephone exchange service and direct the ALJs to arbitrate the remaining issues between the Parties. In the alternative, the Commission should direct the ALJs to arbitrate the remaining issues between the Parties pursuant to Section 251(a).

Respectfully submitted,

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Dated: February 23, 2009

Its Attorneys

**CERTIFICATE OF SERVICE**

I, Angela F. Collins, certify that on this 23rd day of February 2009, I electronically filed a copy of the foregoing Brief on Exceptions of Intrado Inc. with the Clerk of the Illinois Commerce Commission and served a copy on the following via electronic mail.



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# Attachment 2

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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|   |   |                    |
|---|---|--------------------|
| In the Matter of the Petition of Intrado Inc. for | ) |                    |
| Arbitration Pursuant to Section 252(b) of the     | ) |                    |
| Communications Act of 1934, as amended, to        | ) | Docket No. 08-0545 |
| Establish an Interconnection Agreement with       | ) |                    |
| Illinois Bell Telephone Company d/b/a             | ) |                    |
| AT&T Illinois                                     | ) |                    |

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**Intrado Inc. Reply Brief on Exceptions**

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## **Table of Contents**

|   | <b><u>Page</u></b> |
|---|--------------------|
| <b>ARGUMENT.....</b>  | <b>2</b>           |
| <b>I. INTRADO PROVIDES TELEPHONE EXCHANGE SERVICE AND IS ENTITLED TO SECTION 251(C) RIGHTS AS STAFF HAS RECOGNIZED.....</b> | <b>2</b>           |
| <b>II. THIS ARBITRATION PROCEEDING HAS NO EFFECT ON THIRD PARTIES OR STAFF’S REQUEST FOR A GENERIC PROCEEDING .....</b>     | <b>5</b>           |
| <b>CONCLUSION .....</b>   | <b>8</b>           |
| <b>CERTIFICATE OF SERVICE</b>   |                    |

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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|   |   |                    |
|---|---|--------------------|
| In the Matter of the Petition of Intrado Inc. for | ) |                    |
| Arbitration Pursuant to Section 252(b) of the     | ) |                    |
| Communications Act of 1934, as amended, to        | ) | Docket No. 08-0545 |
| Establish an Interconnection Agreement with       | ) |                    |
| Illinois Bell Telephone Company d/b/a             | ) |                    |
| AT&T Illinois                                     | ) |                    |

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**Intrado Inc. Reply Brief on Exceptions**

Intrado Inc. (“Intrado”), by its attorneys, hereby submits its Reply Brief on Exceptions in connection with Intrado’s Petition for Arbitration (“Petition”) to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois (“AT&T”) pursuant to Section 252(b) of the Communications Act of 1934, as amended (“Act”).<sup>1</sup> The Illinois Commerce Commission (“Commission”) should adopt the two exceptions set forth in Intrado’s Brief on Exceptions<sup>2</sup> and find that Intrado offers telephone exchange service and is therefore entitled to interconnection under Section 251(c) of the Act as recommended by Commission Staff in this proceeding. The Commission should reject the finding in the Proposed Arbitration Decision (“PAD”)<sup>3</sup> that Intrado does not offer telephone exchange service because it is based on an erroneous interpretation of federal law, and should direct the Administrative Law Judges

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<sup>1</sup> 47 U.S.C. § 252(b).

<sup>2</sup> Intrado recognizes that Rule 761.430 requires “a suggested replacement statement or finding” to be included in exceptions. Given that Intrado takes exception to the majority of the statements and findings in the Proposed Arbitration Decision, it would be impractical for Intrado to include specific suggested replacement statements or findings in its exceptions other than the inclusion of the suggested replacement finding that Intrado offers telephone exchange service and is entitled to Section 251(c) interconnection.

<sup>3</sup> Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Proposed Arbitration Decision (Feb. 13, 2009) (“PAD”).

(“ALJs”) to arbitrate the remaining unresolved issues pursuant to Section 251(c) and, as necessary, pursuant to Section 251(a) of the Act.

## **ARGUMENT**

### **I. INTRADO PROVIDES TELEPHONE EXCHANGE SERVICE AND IS ENTITLED TO SECTION 251(C) RIGHTS AS STAFF HAS RECOGNIZED**

As set forth in Intrado’s Briefs and Intrado’s Brief on Exceptions, Intrado’s 911 service satisfies each prong of the telephone exchange service definition as interpreted by the Federal Communications Commission (“FCC”) (Intrado Exception No. I).<sup>4</sup> The PAD correctly determines that Intrado’s 911 service satisfies the “within a telephone exchange” and “exchange service charge” requirements of the telephone exchange service definition.<sup>5</sup> Intrado’s service also allows Intrado’s public safety answering point (“PSAP”)<sup>6</sup> customers to receive 911 calls and intercommunicate with all 911 callers programmed to reach the particular PSAP. Intrado’s service therefore satisfies the “intercommunication” requirement of the telephone exchange service definition.<sup>7</sup> This is consistent with Commission Staff’s conclusions throughout this proceeding that Intrado offers telephone exchange service and is therefore entitled to interconnection pursuant to Section 251(c).<sup>8</sup>

Intrado also agrees with Staff’s finding that the Commission should take an expansive view of the types of entities entitled to interconnection pursuant to Section 251(c).<sup>9</sup> The PAD itself acknowledges that the Commission is “receptive to statutory interpretation that advances

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<sup>4</sup> Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; Intrado BOE at 3-6.

<sup>5</sup> PAD at 15-16, 16-17.

<sup>6</sup> For ease of reference, Intrado uses the term “PSAP” to refer to any Illinois public safety agency, Emergency Telephone System Board, or other entity that may be responsible for purchasing 911/E911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

<sup>7</sup> Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; Intrado BOE at 3-6.

<sup>8</sup> Staff Initial Brief at 9-10; Staff BOE at 2.

<sup>9</sup> Staff BOE at 2.

the law's intentions and enhances public safety,"<sup>10</sup> but the PAD's conclusions ignore this important public interest objective. The approach advocated by Staff in its Brief on Exceptions is consistent with the Commission's prior findings in Sprint's arbitration proceeding with various rural carriers.<sup>11</sup> In that case, the Commission determined that supporting Sprint's entry into the market was "significant" because it represented "one of the first, if not the first," competitive alternatives in the geographic areas Sprint sought to serve.<sup>12</sup> The same is true here. The Illinois public safety agencies Intrado seeks to serve are a class of customers with no competitive choice of service provider today.<sup>13</sup> Thus, a finding that Intrado is entitled to interconnect with AT&T, pursuant to Section 251(c), Section 251(a) or both, would "greatly serve[] the public interest" and would allow the Illinois public safety market "to benefit from the competitive telecommunications market"<sup>14</sup> as Congress, the Illinois legislature, and this Commission envisioned.<sup>15</sup>

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<sup>10</sup> PAD at 18.

<sup>11</sup> Staff BOE at 2 (citing Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005) ("*Sprint-Rural Order*"); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff'd Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007)).

<sup>12</sup> *Sprint-Rural Order* at 11.

<sup>13</sup> Direct Testimony of Carey F. Spence-Lenss on behalf of Intrado Inc. at 24, lines 4-6 (Intrado Hearing Exhibit 4).

<sup>14</sup> *Sprint-Rural Order* at 18.

<sup>15</sup> Section 251 was intended to facilitate "[v]igorous competition," which Congress understood "would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [incumbent carriers]." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 16 (1996) ("*Local Competition Order*") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). The process established by Section 251 and the FCC's implementing rules eliminates these barriers to entry to give competitors like Intrado "a fair opportunity to compete" in the marketplace. *See id.* ¶ 18. The opening of the local exchange market to competition was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets." *Id.* ¶ 4. Illinois law also supports a competitive telecommunications market. *See, e.g.*, 220 ICLS 5/13-103 (directing the Commission to ensure the "development of and prudent investment in advanced telecommunications services and networks that foster economic development of the State

The Commission's conclusions in the Sprint proceedings are also consistent with its previous findings in the *SCC Order* that the "public interest is protected when [911/E911] services are regulated."<sup>16</sup> As Staff notes, the PAD does not adequately address "how the facts obtained in the instant matter differ from those in" the *SCC* proceeding.<sup>17</sup> Indeed, Staff correctly recognizes that Intrado's current 911/E911 product will offer significantly more than SCC's service offering.<sup>18</sup> Unlike SCC, Intrado will not merely be a middleman, but will provide a complete, integrated service to its Illinois public safety customers. Moreover, Intrado will provide services to telematics providers (such as OnStar) and private branch exchange ("PBX") owners who have subscribers that originate 911 calls.<sup>19</sup> Thus, there is no justification for reversing the Commission's prior findings in the *SCC Order* or for the Commission to accept the edits proposed by Staff to the PAD with respect to the *SCC Order* under Staff Exception No. 2.<sup>20</sup>

Finally, Intrado disagrees with Staff that the classification of AT&T's 911 service to Illinois public safety agencies has no bearing on this proceeding (Staff Exception No. 3).<sup>21</sup> As evidenced by the Emergency Telephone Service Act and the Commission's Part 725 rules, it has already been determined that 911/E911 services should be subject to a significant level of

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[is] encouraged through the implementation and enforcement of policies that promote effective and sustained competition in all telecommunications service markets") (emphasis added).

<sup>16</sup> Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (Mar. 21, 2001) ("*SCC Order*"); see also Intrado BOE at 9-10 (discussing the Commission's previous public interest findings).

<sup>17</sup> Staff BOE at 3.

<sup>18</sup> Staff BOE at 3-4.

<sup>19</sup> Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Intrado Communications Inc. Verified Petition for Arbitration at 6, n.10 (filed Sept. 22, 2008).

<sup>20</sup> Staff BOE at 5.

<sup>21</sup> Staff BOE at 7.

regulation.<sup>22</sup> The Commission has routinely regulated the 911/E911 services provided by AT&T and other incumbents,<sup>23</sup> has approved of the inclusion of such services in the incumbents' regulated local exchange tariffs,<sup>24</sup> and has rejected attempts by other unqualified 911/E911 service providers to enter the market.<sup>25</sup> The statements contained in AT&T's tariff regarding its 911/E911 service and the Commission's past treatment of that and other 911/E911 services therefore have a direct bearing on the Commission's conclusions in this proceeding. If AT&T's 911/E911 service is treated as a local exchange service, there is no justification for treating Intrado's service any differently.

## **II. THIS ARBITRATION PROCEEDING HAS NO EFFECT ON THIRD PARTIES OR STAFF'S REQUEST FOR A GENERIC PROCEEDING**

The only matter at issue in this proceeding is Intrado's right to interconnect and the interconnection arrangements that must be established between Intrado and AT&T to support Intrado's provision of 911/E911 services to Illinois PSAPs and public safety agencies consistent with Illinois and federal law. There are no third party rights at issue in this arbitration<sup>26</sup> and there is no need for the Commission to conduct a generic proceeding prior to resolving the interconnection arrangements at issue here.<sup>27</sup>

The legal framework necessary to grant Intrado's interconnection request is already in place. Interconnection is available to Intrado under Section 251(c) or Section 251(a) (or both) of

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<sup>22</sup> Emergency Telephone System Act, 50 ICLS 75010, 750.11; 83 ILL. ADM. CODE PART 725.

<sup>23</sup> See, e.g., Docket No. 93-0037, *Revision of 83 Ill. Adm. Code 725*, Order (Sept. 13, 1995).

<sup>24</sup> AT&T's 911/E911 service to PSAPs is located in its general exchange tariff and is classified as a "telephone exchange communications service" in the tariff. See *Illinois Bell Telephone Company Ill. C.C. No. 20*, Part 8, Section 3.

<sup>25</sup> Docket No. 04-0406, *Ramsey Emergency Services, Inc. Application for a Certificate of Local Authority to Operate as a Provider of Telecommunications Services in All Areas in the State of Illinois*, Order (May 17, 2005), *aff'd Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

<sup>26</sup> Cf. Staff BOE at 8.

<sup>27</sup> Cf. Staff BOE at 10.

the Act as explained in Intrado's Brief on Exceptions (Intrado Exception No. II).<sup>28</sup> At a minimum, Intrado is a telecommunications carrier<sup>29</sup> and interconnection is a duty of all telecommunications carriers under Section 251(a) regardless of whether they offer "telephone exchange service" as the PAD acknowledges.<sup>30</sup> Indeed, the Commission has previously found that Section 251(a) "contains no restrictions on who may interconnect with whom."<sup>31</sup> The issue of 251(a) interconnection is properly before the Commission as a result of the positions taken by AT&T in this proceeding that Intrado is only entitled to a 251(a) or commercial agreement for interconnection.<sup>32</sup>

Further, Illinois law recognizes the possibility of a competitive provider of 911/E911 services to Illinois public safety agencies.<sup>33</sup> As long as Intrado's service complies with the Commission's rules for 911 system providers, Intrado should not be denied the right to provide this intrastate service.<sup>34</sup> Intrado's service offering will be detailed in its tariff, which can be

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<sup>28</sup> Intrado BOE at 6-10.

<sup>29</sup> PAD at n.3 ("Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services."); *see also* Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Order (Dec. 20, 2000); Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Amendatory Order (Jan. 31, 2001); *SCC Communications Corp. Name Change to Intrado, Inc.* (filed Oct. 11, 2001).

<sup>30</sup> PAD at 3; *see also* 47 U.S.C. § 251(a) (setting forth the interconnection obligation of all telecommunications carriers); 47 U.S.C. § 153(47) (defining "telephone exchange service").

<sup>31</sup> *Sprint-Rural Order* at 13.

<sup>32</sup> Intrado BOE at 6-7; *see also* Transcript at 132, lines 7-11 (Pellerin) ("Q: The [Florida] Staff recommendation, however, did determine that the parties can negotiate an interconnection agreement pursuant to Section 251A; is that correct? A: That's my understanding."); Transcript at 132, lines 12-16 (Pellerin) ("AT&T has never taken the position that it was not willing to negotiate a commercial agreement with Intrado. Whether you refer to that as 251A agreement or not, I don't have an opinion on that."); Transcript at 139, lines 8-19 (Pellerin) ("Q: Does AT&T have any obligation to negotiate or interconnect with Intrado outside of Section 251? A: Well, I think we are here talking about Section 251C interconnection negotiations and arbitration. Beyond that, all telecommunications carriers have obligations under 251A. Q: So the commercial agreement that you believe should be entered into would be pursuant to 251A? A: Potentially.").

<sup>33</sup> 83 ILL. ADMIN CODE TIT. § 725.500(c)(2); *see also* Direct Testimony of Marci Schroll on behalf of the Staff of the Illinois Commerce Commission at 5, lines 103-08 (Staff Hearing Exhibit 3).

<sup>34</sup> Intrado agrees with Staff that it is not necessary to classify 911/E911 service under Illinois law. *See* Staff BOE at 9. The Commission has already determined that 911/E911 services should be regulated in adopting the Part

examined by the Commission pursuant to the same process applied to all other carriers.<sup>35</sup> To treat Intrado any differently would amount to a barrier to entry under Section 253 of the federal Act<sup>36</sup> and would be inconsistent with the Commission's prior conclusion that promoting competition in previously non-competitive markets "greatly serve[s] the public interest."<sup>37</sup> Thus, the proposed revisions suggested by Staff under Exceptions No. 4 and 5 are unnecessary and should be rejected.

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725 rules. *See* 83 ILL. ADMIN CODE TIT. Part 725. Moreover, the PAD makes clear that 911/E911 service is a local service. *See* PAD at 15.

<sup>35</sup> 220 ILCS 5/13-505 (stating that a competitor like Intrado is only required to demonstrate that its proposed rates are reasonable); *see also* Transcript at 148, lines 13-20 (Pellerin) (AT&T's witness acknowledging that "just and reasonable rates" is the standard in Illinois).

<sup>36</sup> To ensure that the competition contemplated by Section 251 would flourish, the Act specifically condemns state statutes, regulations, or legal requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). Thus, no state may "erect legal barriers to entry to telecommunications markets that would frustrate the 1996 Act's explicit goal of opening local markets to competition." *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e) and 253*, 13 FCC Rcd 16400, ¶ 8 (1998).

<sup>37</sup> *Sprint-Rural Order* at 13; *see also* Intrado BOE at n.6 (discussing the goals of Sections 251 and 253 to promote competition).



## **CONCLUSION**

For the foregoing reasons and those set forth in Intrado's Brief on Exceptions, Intrado respectfully requests that the Commission reject the PAD's finding that Intrado does not offer telephone exchange service and direct the ALJs to arbitrate the remaining issues between the Parties pursuant to Section 251(c), Section 251(a), or both.

Respectfully submitted,

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Dated: March 2, 2009

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**CERTIFICATE OF SERVICE**

I, Angela F. Collins, certify that on this 2nd day of March 2009, I electronically filed a copy of the foregoing Reply Brief on Exceptions of Intrado Inc. with the Clerk of the Illinois Commerce Commission and served a copy on the following via electronic mail.

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